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Federal Communications Commission

FCC MAIL SECTION

DA 04-2267

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Harrisonburg, Louisiana)	)	MB Docket No. 04-266
	)	RM-11005
)	
(Mecca, California)	)	MB Docket No. 04-267
	)	RM-11008
)	
(Taos, New Mexico)	)	MB Docket No. 04-268
	)	RM-11009
)	
(San Joaquin, California)	)	MB Docket No. 04-269
	)	RM-11010
)	
(Rosepine, Louisiana)	)	MB Docket No. 04-270
	)	RM-11012
)	
(Waynoka, Oklahoma)	)	MB Docket No. 04-271
	)	RM-11013
)	
(Wasco, California)	)	MB Docket No. 04-272
	)	RM-11014
)	
(Richland Springs, Texas)	)	MB Docket No. 04-273
	)	RM-11015
)	
(Port Isabel, Texas)	)	MB Docket No. 04-274
	)	RM-11016
)	
(Coalinga, California)	)	MB Docket No. 04-275
	)	RM-11017
)	
(Randsburg, California)	)	MB Docket No. 04-276
	)	RM-11033
)	
(Ringwood, Oklahoma)	)	MB Docket No. 04-277
	)	RM-11034
)	
(Taos Pueblo, New Mexico)	)	MB Docket No. <u>04-278</u>
	)	RM-11035
)	

(Mooreland, Oklahoma)	)	MB Docket No. 04-279
	)	RM-11036
)	
(Coupeville, Washington)	)	MB Docket No. 04-280
	)	RM-11037

NOTICE OF PROPOSED RULE MAKING**Adopted: July 21, 2004****Released: July 26, 2004****Comment Date: September 16, 2004****Reply Comment Date: October 1, 2004**

By the Assistant Chief, Audio Division:

1. Before the Audio Division for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission rules.¹ The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-266; RM-11005

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 232A at Harrisonburg, Louisiana, as the community's first local aural transmission service.²

¹ 47 C.F.R. § 73.202(b).

² In support of its proposal, petitioner states that Harrisonburg is an incorporated city with a 2000 U.S. Census population of 746 persons. Harrisonburg has its own mayor, police department, post office, elementary school, volunteer fire department, and a number of churches. Petitioner further states that the allotment would provide additional diversity for Harrisonburg, and an outlet for local self-expression to its residents.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Harrisonburg, Louisiana	----	232A

Coordinates: 31-48-18 NL and 91-47-26 WL³

Additional Information: This allotment requires a site restriction of 4.9 kilometers (3.0 miles) northeast to avoid short-spacings to the licensed sites of Station WEMX(FM), Channel 231C1, Kentwood, Louisiana, and Station KSMB(FM), Channel 233C, Lafayette, Louisiana. To accommodate the allotment, petitioner requested that Station KSMB(FM) at Lafayette, Louisiana, be reclassified from Channel 233C to Channel 233C0. However, our engineering analysis has determined that, at the site used for this allotment, the reclassification of Station KSMB(FM) at Lafayette is not necessary, and an *Order to Show Cause* will not be issued.

Contact: Sharon P. McDonald (202) 418-2180

B. MB Docket No. 04-267; RM-11008

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 274A at Mecca, California, as the community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Mecca, California	249A	249A, 274A

Coordinates: 33-34-18 NL and 116-04-35 WL

Additional Information: This allotment is located at city reference coordinates and does not require a site restriction. Since Mecca, is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Contact: Sharon P. McDonald (202) 418-2180

³ We note that these coordinates are short-spaced to Station KTRY-FM, Channel 232A, Bastrop, Louisiana. However, Channel 230A was substituted for Channel 232A at Bastrop, Louisiana, pursuant to a *Report and Order* in MM Docket 99-141. See 16 FCC Rcd 7220 (2001).

C. MB Docket No. 04-268; RM-11009

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 288A at Taos, New Mexico, as the community's fifth local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Taos, New Mexico	228A, 240A 256C, 270C1	228A, 240A, 256C, 270C1, 288A

Coordinates: 36-26-55 WL and 105-39-00 WL

Additional Information: This allotment requires a site restriction of 8.3 kilometers (5.2 miles) northwest to avoid a short-spacing to the proposed allotment site for Channel 287C at Des Moines, New Mexico.

FCC Contact: Sharon P. McDonald (202) 418-2180

D. MB Docket No. 04-269; RM-11010

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 299A at San Joaquin, California, as the community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
San Joaquin, California	288B1 ⁴	288B1, 299A

Coordinates: 36-36-00 NL and 120-12-36 WL

Additional Information: This allotment requires a site restriction of 2.1 kilometers (1.2 miles) west to avoid a short-spacing to the licensed site for Station KZOL(FM), Channel 300B1, North Fork, California.

⁴ Action in this *Notice of Proposed Rule Making* corrects the FM Table of Allotments to show the allotment of Channel 288B1 in lieu of Channel 288A at San Joaquin, California. An application (File No. BLH-20011002AAM) for a one-step upgrade was granted on December 17, 2001. This action constitutes an editorial change in the FM Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b)(A) and (B).

Contact: Sharon P. McDonald (202) 418-2180

E. MB Docket No. 04-270; RM-11012

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 281A at Rosepine, Louisiana, as the community's first local aural transmission service.⁵

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Rosepine, Louisiana	--	281A

Coordinates: 30-55-24 NL and 93-20-24 WL

Additional Information: This allotment requires site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to the licensed of Station KJLO-FM, Channel 281C, Monroe, Louisiana.

FCC Contact: Sharon P. McDonald (202) 418-2180

F. MB Docket No. 04-271; RM-11013

Petitioner: Charles Crawford
d/b/a Waynoka Broadcasting Company
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 231C2 at Waynoka, Oklahoma, as the community's first local aural transmissions service.⁶

⁵ In support of his proposal, petitioner states that Rosepine is an incorporated community with a 2000 U.S. Census population of 1,135 persons. Rosepine has its own mayor, post office, volunteer fire department, police department, chief of police, high school, elementary school, and several local churches. Petitioner further states that Rosepine is a community that deserves a local FM service that will provide additional diversity for Rosepine, and an outlet for local self-expression to its residents.

⁶ In support of its proposal, petitioner states that Waynoka is an incorporated community with a 2000 U.S. Census population of 993 persons. Waynoka has its own mayor, post office, fire department, police department, school district, and a number of local churches. Petitioner further states that Waynoka is a community that deserves an FM service that will provide additional diversity for Waynoka, and an outlet for local self-expression to its residents.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Waynoka, Oklahoma	---	231C2

Coordinates: 36-49-25 NL and 98-59-50 WL

Additional Information: This allotment requires a site restriction of 28.8 kilometers (17.9 miles) north to avoid a short-spacing to the proposed allotment site for Channel 233A, Cherokee, Oklahoma.

Contact: Sharon P. McDonald (202) 418-218

G. MB Docket No. 04-272; RM-11014

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 224A at Wasco, California, as the community's first local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Wasco, California	—	224A

Coordinates: 35-35-37 NL and 119-20-35WL

Additional Information: This allotment is located at city reference coordinates and requires no site restriction.

Contact: Sharon P. McDonald (202) 418-2180

H. MB Docket No. 04-273; RM-11015

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 299A at Richland Springs, Texas, as potentially the community's third local FM transmission service. To accommodate the allotment, petitioner also requests the modification of the reference coordinates for vacant Channel 299A at Hamilton, Texas.

CommunityPresentProposed

Richland Springs, Texas

252A

252A, 291A⁷, 299A**Coordinates:** 31-09-42 NL and 99-02-03 WL

Additional Information: This allotment requires a site restriction of 14.7 kilometers (9.1 miles) southwest to avoid a short-spacing to the proposed allotment site for Channel 296A, Brady, Texas. The modified reference coordinates (31-49-57 NL and 98-07-00 WL) for vacant Channel 299A, Hamilton, Texas, requires a site restriction of 14.3 kilometers (8.9 miles) north of the community. Since Richland Springs is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Contact: Sharon P. McDonald (202) 418-2180**I. MB Docket No. 04-274; RM-11016**

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 288A at Port Isabel, Texas, as the community's second local FM transmission service.

CommunityPresentProposed

Port Isabel, Texas

266C2

266C2, 288A

Coordinates: 25-59-25 NL and 97-09-59 WL

Additional Information: This allotment requires a site restriction of 10.0 kilometers (6.3 miles) southeast of the community. Since Port Isabel is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Contact: Sharon P. McDonald (202) 418-2180

⁷ A counterproposal (RM-10120) was filed on April 9, 2001, in MM Docket No. 01-47, proposing the allotment of Channel 291A at Richland Springs, Texas. See 16 FCC Rcd 3522 (2001); *Public Notice*, Report No. 2488, June 1, 2001.

J. MB Docket No. 04-275; RM-11017

Petitioner: Robert Eurich, President
105 Mountain Air, Inc.
7179 N. Van Ness
Fresno, California 93711

Proposal: Allot Channel 265A at Coalinga, California, as the community's third local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Coalinga, California	247A, 261B	247A, 261A, 265A

Coordinates: 36-08-22 NL and 120-27-00 WL

Additional Information: This allotment requires a site restriction of 8.1 kilometers (5.1 miles) west to avoid a short-spacing to the licensed site for Station KWYE(FM), Channel 266B, Fresno, California.

Contact: Sharon P. McDonald (202) 418-2180

K. MB Docket No. 04-276; RM-11033

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 271A at Randsburg, California, as the community's first commercial FM transmission service.⁸

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Randsburg, California	—	271A

Coordinates: 35-22-06 NL and 117-39-25 WL

Additional Information: This allotment is located at city reference coordinates and requires no site

⁸ In support of the proposal, petitioner states that Randsburg is a Census Designated Place located in southern California along U.S. Highway 395 in Kern County. Randsburg has a 2000 U.S. Census population of 77 persons. It has its own zip code (93554), telephone exchange (882), post office, joint saloon, two churches, several antique stores, an elementary school, and the regional fire department. There are also businesses bearing the community's name, such as the Randsburg Cottage Hotel, Randsburg Opera House, Randsburg Café, Randsburg General Store, and the Randsburg Museum.

restriction. Since Randsburg is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

Contact: Sharon P. McDonald (202) 418-2180

L. MB Docket No. 04-277; RM-11034

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 285A at Ringwood, Oklahoma, as the community's first local aural transmission service.⁹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Ringwood, Oklahoma	---	285A

Coordinates: 36-26-13 NL and 98-09-31 WL

Additional Information: This allotment requires a site restriction of 10.0 kilometers (6.2 miles) northeast to avoid a short-spacing to the licensed site for Station WWLS-FM, Channel 285A, Bethany, Oklahoma.

Contact: Sharon P. McDonald (202) 418-2180

M. MB Docket No. 04-278; RM-11035

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 292C3 at Taos Pueblo, New Mexico, as the community's first local aural transmission service.¹⁰

⁹ In support of his proposal, petitioner states Ringwood is an incorporated community with a 2000 U.S. Census population of 394 persons. It has its own zip code, mayor, school system, a volunteer fire department, police department, post office and a number of local churches. Petitioner further states that the local FM service will provide additional diversity to Ringwood, and an outlet for local self-expression to its residents.

¹⁰ In support of the proposal, petitioner states that Taos Pueblo is a Census Designated Place located in Taos County. The 2000 U.S. Census population is 1,264 persons.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Taos Pueblo, New Mexico	---	292C3

Coordinates: 36-26-19 NL and 105-32-38 WL

Additional Information: This allotment is located at city reference coordinates and does not require a site restriction.

Contact: Sharon P. McDonald (202) 418-2180

N. MB Docket No. 04-279; RM-11036

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 254A at Mooreland, Oklahoma, as the community's third local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Mooreland, Oklahoma	283C1, 300C2	254A, 283C1, 300C2

Coordinates: 36-30-30 NL and 99-20-00 WL

Additional Information: This allotment requires a site restriction of 13.9 kilometers (8.6 miles) northwest of the community.

Contact: Sharon P. McDonald (202) 418-2180

O. MB Docket No. 04-280; RM-11037

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 266A at Coupeville, Washington, as the community's first local aural transmission service.¹¹

¹¹ In support of the proposal, petitioner states that Coupeville is an incorporated town located in Island County in northwest Washington. It has a 2000 U.S. Census population of 1,723 persons.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Coupeville, Washington	----	266A

Coordinates: 48-18-00 NL and 122-42-00 WL

Additional Information: This allotment requires a site restriction of 9.5 kilometers (5.9 miles) north to avoid a short-spacing to the licensed site for Station KPLZ-FM, Channel 268C, Seattle, Washington. Since Coupeville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, and the allotment is short-spaced to the licensed site for Channel 266C, New Westminster, British Columbia, and the allotment site for Channel 266A, River Jordan, British Columbia, concurrence of the Canadian government for this allotment has been requested as a specially negotiated, short-spaced allotment.

Contact: Sharon P. McDonald (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, (47 C.F.R. §§ 1.415, 1.419) interested parties may file comments on or before September 16, 2004, and reply comments on or October 1, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹²

6. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East

¹² See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. For further information concerning this proceeding, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. § 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. § 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.